

STATE OF ILLINOIS
ILLINOIS COMMERCE COMMISSION

Illinois Commerce Commission :
on its Own Motion: :
 : Docket No. 20-0309
In the Matter of Moratorium on Disconnection :
of Utility Services during the Public Health :
Emergency Declared on March 9, 2020 :
pursuant to Sections 4 and 7 of the :
Illinois Emergency Management Agency Act :
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EMERGENCY INTERIM ORDER

By the Commission:

On March 9, 2020, Governor JB Pritzker issued a Declaration under Sections 4 and 7 of the Illinois Emergency Management Agency Act (IEMA Act), finding that as a result of the global COVID-19 epidemic and the presence of COVID-19 cases in Illinois, a public health emergency exists in the State of Illinois within the meaning of Section 4 of the IEMA Act, and declaring all 102 counties within the State to be disaster areas within the meaning of Section 7 of the IEMA Act. The Governor and Attorney General Kwame Raoul requested that the Commission take action by initiating an emergency proceeding on a moratorium on shutoffs for all utility companies across Illinois, including investor-owned utilities, municipal cooperatives, and water companies.

I. The COVID-19 Outbreak

On March 11, 2020, the World Health Organization (“WHO”) declared coronavirus and the disease it causes, COVID-19, a pandemic.¹ More than 118,000 cases of infection in 114 countries have been identified, and more than 4,290 persons have died as a result of the virus as of this same date, according to the WHO.² The number of coronavirus cases, the number of deaths and the number of affected countries are expected to “climb even higher.”³

¹ See WHO Director-General's opening remarks at the media briefing on COVID-19, March 11, 2020 <https://www.who.int/emergencies/diseases/novel-coronavirus-2019/events-as-they-happen>

² <https://www.who.int/dg/speeches/detail/who-director-general-s-opening-remarks-at-the-media-briefing-on-covid-19---11-march-2020>

³ *Id.*

It is unknown when a vaccine will be available.⁴ Elders and those with underlying medical conditions are most at risk.⁵ The Center for Disease Control recommends that persons self-monitor and remain at home if ill.⁶ Schools in Illinois and universities across the country are closing for indefinite time, with on-line education replacing in-person instruction. On March 11, 2020, Illinois joined 13 other states that have declared a state of emergency in response to the growing number of identified COVID-19 cases.⁷ Millions have lost wages due to the economic downturn stemming from the disruptions of COVID-19.⁸

II. Declaration of Public Health Emergency

On March 13, 2020, Governor J. B. Pritzker, Chicago Mayor Lori Lightfoot and public health officials issued guidance for Illinois residents related to the COVID-19 pandemic.⁹

In light of the pandemic and the resulting actions and directives, it is critical that public utilities, including all Illinois electric, gas, water and sewage utilities across the state ensure that Illinois residents remain connected to essential utility services. Municipalities such as the City of Seattle¹⁰ and the City of Detroit¹¹ have taken action to prohibit the shut off of water, electricity, natural gas and telecommunications service during the COVID-19 state of emergency due to customers' inability to pay. The City of Chicago, too, eliminated water shut offs earlier this year. The Commission, through this Order, adopts similar protections.

Governor J.B. Pritzker and Attorney General Kwame Raoul, in a March 13, 2020 letter to the Commission, requested that the Commission take this action. Likewise, on March 13, 2020, the Acting Executive Director of the Commission directed correspondence to

⁴ Jenni Fink, *Coronavirus Vaccine at Least a Year Away, but Treatment Could be Here in Months*, Newsweek (March 19, 2020). Available at <https://www.newsweek.com/coronavirus-vaccine-treatment-antiviral-speed-covid-19-1491292>.

⁵ See World Health Organization's, *Q&A on Coronaviruses (COVID-19)*. Available at <https://www.who.int/news-room/q-a-detail/q-a-coronaviruses>.

⁶ CDC, *Coronavirus Disease (COVID-2019) Steps to Prevent Illness*. Available at <https://www.cdc.gov/coronavirus/2019-ncov/about/prevention.html>; CDC, *Coronavirus Disease 2019 (COVID-19) Risk Assessment and Public Health Management Decision Making* Each question refers to within the past 14 days (Feb. 28, 2020). Available at <https://www.cdc.gov/coronavirus/2019-ncov/downloads/public-health-management-decision-making.pdf>.

⁷ Press release, State of Illinois, "Gov. Pritzker Issues Disaster Proclamation to Build on State's COVID-19 Response, Unlock Additional Federal Resources." See <https://www2.illinois.gov/Pages/news-item.aspx?ReleaseID=21220>

⁸ See *Request for Emergency Low-Income Residential Shut-Off Protections as Part of the COVID-19 Response*, filed with California Public Service Commission, National Consumer Law Center, TURN, March 12, 2020.

⁹ *State of Illinois and City of Chicago Issue New Guidance to Minimize COVID-19 Spread*, Office of the Governor press release, March 12, 2020. See <https://www2.illinois.gov/Pages/news-item.aspx?ReleaseID=21245>

¹⁰ Daniel Beekman, *Seattle will keep customers' lights, water on during coronavirus emergency, defer taxes for small businesses* (March 10, 2020). Available at <https://www.seattletimes.com/seattle-news/health/seattle-will-keep-customers-lights-water-on-during-coronavirus-emergency-defer-taxes-for-small-businesses/>.

¹¹ John Bowden, *Detroit officials halt water shutoffs over coronavirus outbreak concerns*, The Hill (March 9, 2020). Available at <https://thehill.com/homenews/state-watch/486705-detroit-officials-halt-water-shutoffs-over-coronavirus-outbreak-concerns>.

all jurisdictional gas, water, sewer and electric distribution utilities, strongly urging each to take such action voluntarily in anticipation of further Commission action.

III. Powers of the Commission

Section 4-301 of the Public Utilities Act (“the Act”) provides that “(t)he Commission shall, at such times as the Governor, the General Assembly, or either branch of the General Assembly shall direct, examine any particular subject connected with the condition and management of public utilities, and report to the Governor or the General Assembly, as the case may be, in writing its opinion thereon with its reasons therefor.” 220 ILCS 5/4-301.

The Illinois General Assembly has found that adequate, safe and reliable utility service is vital to the health and welfare of the State’s citizens. The Commission is authorized by the General Assembly to oversee the operations of public utilities in the State of Illinois. Section 8-505 of the Act provides broad authority to the Commission in monitoring utility operations:

The Commission shall have power, after a hearing or without a hearing as provided in this Section and upon its own motion, or upon complaint, by general or special orders, rules or regulations, or otherwise, to require every public utility to maintain and operate its plant, equipment or other property in such manner as to promote and safeguard the health and safety of its employees, customers, and the public, and to this end to prescribe, among other things, the installation, use, maintenance and operation of appropriate safety or other devices or appliances, to establish uniform or other standards of equipment, and to require the performance of any other act which the health or safety of its employees, customers or the public may demand.

220 ILCS 5/8-505. In this state of emergency for the people of the State of Illinois, the Commission is charged with requiring “the performance of any ...act which the health or safety of its ...customers or the public may demand.” *Id.*

Further, Section 8-508 of the Act provides in relevant part that the Commission is authorized to, among other things “regulate the furnishing of service ... whenever and to the extent such action is required by the convenience and necessity of the public ... by reason of a catastrophe ... [or] emergency[.]” 220 ILCS 5/8-508. In an emergency, the Commission is authorized to accomplish this by “an interim order, effective for a period not exceeding 15 days, ... without a hearing if the circumstances do not reasonably permit the holding of a hearing.” *Id.*

In this instance, it is vital that the Commission ensure that essential utility services that are required to maintain public health and safety during this global pandemic emergency are available to all customers. In particular, emergency action is appropriate now, as the statutory prohibition against disconnection of essential electric and gas utility service due

to extreme temperature, pursuant to Section 8-205 of the Act, will expire on March 31, 2020. 220 ILCS 5/8-205.

IV. Commission Analysis and Conclusions

The Commission finds that there are a number of compelling reasons for ordering a moratorium on disconnection of utility service. People who are encouraged or directed to stay home cannot remain there if essential utility services have been disconnected due to inability to pay. Service sector, low-wage and hourly workers are likely to be affected most by any economic downturn that might result, as Illinois residents cease to attend public events, restaurants, sporting events and other entertainment venues.

Access to essential utility service will be necessary to slow the spread of the disease and to protect public health. Frequent hand washing is strongly recommended as a way to limit the spread of COVID-19, requiring access to running water in residences and elsewhere.¹² Access to lighting, electrical appliances and heat are critical at any time, but especially so during a public health emergency when many Illinois residents will be required or requested to remain at home. The Commission observes that the ability to remain safely and comfortably in one's own home during this pandemic should not be determined by one's financial condition during this emergency. The Commission notes, too, that the number of Illinois residents who will now find themselves unable to afford essential utility services will likely grow beyond the number of customers who currently qualify for Low Income Home Energy Assistance Program ("LIHEAP") funding and Percentage of Income Payment Plan ("PIPP")¹³ enrollment. Likewise, persons who are hospitalized with the virus or are caring for family members who have been infected with the virus may be unable to adhere to utility payment deadlines.

The Commission and utilities must act quickly to cease disconnections and threat of disconnection of electric, gas, water and sewage service for all Illinois residents and businesses during this public health emergency. The Commission finds that the respondent public utilities should immediately cease disconnections of utility services during the public health emergency to ensure the health and safety of the State's utility customers, and to cease giving notice of disconnection of utility service.

By this Order, too, the Commission finds that temporary implementation of revised and more flexible utility credit and collections procedures are needed to ensure that customers remain connected to essential utility services when the emergency status ends. Once the moratorium is lifted, utilities should temporarily enact more flexible credit and collections procedures than the minimum standards outlined in Part 280¹⁴ of the Commission's Rules to remain in effect for a period of no less than six (6) months. The Commission finds that a proceeding should be initiated involving all utilities to enact, on a temporary basis, revised and more flexible credit and collections procedures to ensure that all customers remain connected to essential utility services. Thus, each Illinois gas, electric distribution, water, and sewer utility shall file proposed revised credit and

¹² CDC, Coronavirus Disease (COVID-2019) Steps to Prevent Illness. Available at <https://www.cdc.gov/coronavirus/2019-ncov/about/prevention.html>.

¹³ See 305 ILCS 20/18

¹⁴ 83 Ill. Admin. Code Part 280 *et seq.*

collections procedures in this proceeding for the Commission's consideration and approval.

Utilities shall be immediately prohibited from shutting off utility service for Illinois residents during this state of emergency. The moratorium should remain in place until May 1, 2020 or until the Governor announces the end of the COVID-19 state of public health emergency, should the state of emergency remain in effect past May 1, 2020. Utilities shall also be required to notify all households at risk of disconnection of these emergency shut-off protections. Utilities shall also be immediately prohibited from giving notice of disconnection of utility service to Illinois customers during this state of emergency. Utilities shall also be prohibited from assessing late fees or penalties for nonpayment during the moratorium period as described above.

The moratorium, prohibition of giving notice of disconnection and prohibition of late fees or penalties and temporary flexible collection procedures should apply to all classes of utility customers, including residential, industrial and commercial customers.

The Commission notes that disconnections required to maintain safe utility operations, or that are necessary for the repair or maintenance of utility facilities, are not the subject of this order and may continue as individual utilities deem necessary.

Utilities should be granted special permission under Section 9-201 to file tariffs to go into effect on less than 45 days' notice to effectuate the cessation of disconnections for non-payment, and suspension of the imposition of late payment fees or penalties ordered herein.

Finally, it is important that the utilities track all spending resulting from the measures taken in response to the COVID-19 pandemic, in order to enable a meaningful future Commission review of the reasonableness and prudence of such spending, as required by the Act.

V. Findings and Ordering Paragraphs

The Commission, having considered the entire record herein and being fully advised in the premises, is of the opinion and finds that:

- (1) The Commission has jurisdiction over the parties hereto and the subject matter hereof;
- (2) The facts recited and conclusions reached in the prefatory portion of this Order are immediately necessary to ensure the convenience, necessity, safety and welfare of the public and are hereby adopted as findings of fact and law;
- (3) Governor J.B. Pritzker issued a Declaration, finding that a public health emergency exists in the State of Illinois within the meaning of the IEMA Act due to COVID-19 epidemic, and declaring all 102 counties within the State to be disaster areas;

- (4) The Governor and the Attorney General of the State of Illinois requested that the Commission act within its jurisdiction to ensure that, during the declared public health emergency, all people have continued access to essential utility service, regardless of ability to pay;
- (5) All Illinois gas, electric distribution, water, and sewer utilities should be ordered and directed to cease disconnections for non-payment, to cease giving notice of disconnection of utility service and to suspend the imposition of late payment fees or penalties, on an interim basis, and until May 1, 2020 or until the Governor announces the end of the COVID-19 state of public health emergency;
- (6) The moratorium on disconnections and imposition of late fees should apply to all utility customer classes, including residential, commercial and industrial customers;
- (7) Temporary revised and more flexible credit and collections procedures are needed to ensure that customers remain connected to essential utility services when the emergency status ends;
- (8) In light of the public health emergency in effect, circumstances currently in effect do not reasonably permit convening a hearing prior to entry of this Emergency Interim Order;
- (9) Each Illinois gas, electric distribution, water, and sewer utility should be made respondent to this proceeding, and should be directed to submit a statement regarding whether it will voluntarily cease disconnections for non-payment, and suspend the imposition of late payment fees or penalties, after the expiration of this Emergency Interim Order, and through and including May 1, 2020 or until the Governor announces the end of the COVID-19 state of emergency;
- (10) This matter should be set for hearing before an Administrative Judge on or prior to [date], to determine whether any Illinois gas, electric distribution, water, and sewer utility is unwilling or unable to voluntarily cease disconnections for non-payment, or suspend the imposition of late payment fees or penalties, after the expiration of this Emergency Interim Order, and through and including May 1, 2020 or until the Governor announces the end of the COVID-19 state of emergency;
- (11) Utilities should be granted special permission under Section 9-201 to file tariffs to go into effect on less than 45 days' notice to effectuate the cessation of disconnections for non-payment, and suspension of the imposition of late payment fees or penalties ordered herein;

- (12) The utilities should track all spending resulting from the measures in response to the COVID-19 pandemic, in order to enable a meaningful future Commission review of the reasonableness and prudence of such spending; and
- (13) Should further proceedings be required, they should be convened on an expedited basis.

IT IS THEREFORE ORDERED by the Illinois Commerce Commission that all Illinois gas, electric distribution, water, and sewer utilities are ordered and directed to cease disconnections for non-payment, and to suspend the imposition of late payment fees or penalties, on an interim basis, and until May 1, 2020 or until the Governor announces the end of the COVID-19 state of emergency, if the state of emergency continues past May 1, 2020;

IT IS FURTHER ORDERED that each Illinois gas, electric distribution, water, and sewer utility shall design and implement on a temporary basis more flexible credit and collections procedures and file them for Commission consideration and approval to ensure that customers remain connected to essential utility services when the emergency status ends;

IT IS FURTHER ORDERED THAT within seven days of the date of this order, each Illinois gas, electric distribution, water, and sewer utility is directed to file a response to this order, identifying: (a) whether it will voluntarily cease disconnections for non-payment, and suspend the imposition of late payment fees or penalties, after the expiration of this Emergency Interim Order, and through and including May 1, 2020 or until the Governor announces the end of the COVID-19 state of emergency; and (b) the proposed flexible credit and collections procedures, as described above; or (c) show cause why it is unable to issue said moratorium and revised credit and collections procedures;

IT IS FURTHER ORDERED THAT this matter shall be set for hearing before an Administrative Law Judge by [date], to determine whether any Illinois gas, electric distribution, water, and sewer utility is unwilling or unable to voluntarily cease disconnections for non-payment, or suspend the imposition of late payment fees or penalties, after the expiration of this Emergency Interim Order, and through and including May 1, 2020, or until the Governor announces the end of the COVID-19 state of emergency, if the state of emergency continues past May 1, 2020;

IT IS FURTHER ORDERED THAT the utilities shall keep track of all expenses resulting from this order and any other measures taken in response to the COVID-19 to enable a meaningful future Commission review of the reasonableness and prudence of such expenses;

IT IS FURTHER ORDERED THAT utilities are hereby granted special permission under Section 9-201 to file tariffs to go into effect on less than 45 day's notice to effectuate

the cessation of disconnections for non-payment, and suspension of the imposition of late payment fees or penalties ordered herein;

IT IS FURTHER ORDERED THAT should further proceedings be required, they shall be convened on an expedited basis; and

IT IS FURTHER ORDERED that subject to the provisions of Section 10-113 of the Act and 83 Ill. Adm. Code 200.880, this Emergency Interim Order is not final; it is not subject to the Administrative Review Law.

By order of the Commission this 18th day of March, 2020.

(SIGNED) CARRIE ZALEWSKI

Chairman